

Apr 16 04 10:43a

A. P. DURIGON, ESQ

617-497-0229

P. 1

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OFFICE OF PETITIONS

FACSIMILE COVER SHEET

DATE: April 16, 2004

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OUR FILE: HW-106-CIP

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MESSAGE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/159, 520
Applicant(s) : Anderson *et al.*
Filed : 09/23/1998
TC/AU : 2644
Examiner : PENDLETON, BRIAN T.

Confirmation No. 5244

Docket No. : HW-106-CIP
Customer No. : 37275

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OFFICE OF PETITIONS

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO DECISION ON PETITION AND OFFICE COMMUNICATION

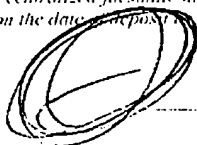
Sir:

By decision dated 28 Jan. 2004 in the above matter (attached hereto), the petition to revive the above-captioned application was granted, the CPA appropriately filed as a reply was treated as a request for continued examination (RCE) and the application was forwarded to the Technology Center (art unit 2644) for processing as a RCE.

CERTIFICATE OF TRANSMISSION

Date of Deposit April 16, 2004

I, Albert Peter Durigon, hereby certify that the above-specified paper(s), appendices and/or fees(s) addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, is/are being transmitted to the centralized facsimile number of the U.S. Patent Office, (703) 872-9306, on the date of deposit indicated above.



Appl. No. 09/159, 520

April 16, 2004

Written Reply to Decision on Petition of 01-28-2 2004 & Office Action of 02-12-2004

By communication dated 12 Feb. 2004 (attached hereto), a Notice of Improper Request for Continued Examination (RCE) was received from the Technology Center.


As the treatment of the CPA as a RCE is believed to be an error or mistaken, numerous telephone contacts pointing this out requesting reconsideration and reinstatement of the CPA and forwarding the same to the Technology Center for processing commencing in mid-February till the present day were made with the Petitions Examiner, Ms. Bond. The SPE of art unit 2644 advised on March 27, 2004 that the case had been physically transferred to Petitions branch, apparently for disposition.

Accordingly, the status of our request orally made to the Petitions Examiner that the decision on petition be amended so as to correct the error or mistake in treating the CPA as a RCE, and, in accord therewith, to convert the RCE back to the CPA as originally filed, and to forward it to the Technology Center for examination, and such action, are hereby respectfully requested.

Respectfully submitted,

Anderson *et al.*

By:



Albert Peter Durigon
Reg. No. 30,049

Law office of A.P. Durigon
20 Eustis Street
Cambridge, MA 02140
617-354-7330



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1800
Alexandria, VA 22304-1800

Paper No. 12

Albert P. Durigon
20 Eustis Street
Cambridge, MA 02140-387

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JAN 28 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
Troy G. Anderson
Application No. 09/159,520
Filed September 23, 1998
Attorney Docket No. HW-106-CIP

This is a decision on the petition under 37 CFR 1.135(b), filed January 7, 2004, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 14, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 15, 2002.

The request for a CPA is being treated as a request for continued examination (RCE) under 37 CFR 1.114.

The application file is being forwarded to Technology Center AI, 2644, for processing the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Best Available Copy



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1429
Alexandria, Virginia 22304-1429
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/159,520	09/23/1998	TROY GENE ANDERSON	HW 106-CIP	5244

7590 02/12/2004

ALBERT PETER DURIGON
20 EUSTIS STREET
CAMBRIDGE, MA 021402387

EXAMINER

PENDLETON, BRIAN T

ART UNIT PAPER NUMBER

2644

DATE MAILED: 02/12/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.



Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 1-7-04 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

Robbie Davenport Examining Group 2600
(703) 305-9020
FORM PTO-2051 (Rev. 3/2001)